

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING - DIVISION OF WATER RIGHTS
SEPTEMBER 22, 2005**

ITEM 12

SUBJECT:

CONSIDERATION OF A PROPOSED RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE AND EXECUTE CONTRACTS FOR THE PREPARATION OF ENVIRONMENTAL DOCUMENTATION IN CONNECTION WITH THE DEVELOPMENT OF PRINCIPLES AND GUIDELINES FOR MAINTAINING INSTREAM FLOWS IN NORTHERN COASTAL STREAMS IN ACCORDANCE WITH STATE POLICY FOR WATER QUALITY CONTROL AS REQUIRED BY CALIFORNIA WATER CODE SECTION 1259.4 (AB 2121).

DISCUSSION:

The State Water Board's Division of Water Rights is responsible for administering water rights in the State of California. The Division's objective is to ensure that the State's waters are put to the best possible use, and that the public interest is served. In administering the water right process, the Division must consider the effects of its actions on the public trust, the public interest, and the environment. In efforts to consider public trust resources, the Division must evaluate both site-specific and cumulative environmental impacts of project development, including adverse impacts on endangered and threatened species.

In 2002 the National Marine Fisheries Service and the California Department of Fish and Game jointly developed "Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams" (draft guidelines). These draft guidelines were recommended for use by permitting agencies (including the State Water Board), planning agencies, and water resources development interests when taking actions that would divert water from mid-coastal watersheds containing anadromous salmonids. The purpose of the draft guidelines is to preserve stream flows to ensure endangered and threatened anadromous salmonids are protected from the deleterious effects of excessive water diversion. The Division currently considers the draft guidelines when reviewing water right applications and petitions, but the draft guidelines are not formal State Water Board policy.

Assembly Bill 2121 (Stats. 2004, ch. 943, §§1-3) added Water Code sections 1259.2 and 1259.4. Water Code section 1259.4 (as amended in July 2005) requires the State Water Board to "adopt principles and guidelines for maintaining instream flows in coastal streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay, as part of state policy for water quality control . . ." for the purposes of water right administration by January 1, 2008.

The adoption of state policy for water quality control is exempt from the California Environmental Quality Act (CEQA) requirement to prepare an Initial Study and Negative

Declaration or EIR. (Cal. Code Regs., tit. 14, §15250.) However, a Substitute Environmental Document (also called a Functionally Equivalent Document, or FED) must be prepared for the project. The FED must include, at a minimum, a project description, alternatives to the proposed project, and mitigation measures to avoid or reduce the proposed project's effects on the environment.

The Division does not have sufficient staff resources to develop the principles and guidelines, including the supporting environmental documents, by January 1, 2008. The Division plans to contract with a private environmental services firm to help develop the principles and guidelines, including the supporting environmental documents. The Budget Act of 2005, Senate Bill 77 (Stats. 2005, ch. 38) includes for the State Water Board \$3,666,000 from the Public Resources Account, Cigarette and Tobacco Products Surtax Fund, of which \$1.5 million is earmarked for this work. Additionally, \$1.5 million was reappropriated in the Water Rights Fund from FY 2004-05. This \$1.5 million is to be transferred from the Resources Trust Fund Tidelands Oil Revenue Account to the Water Rights Fund and is designated for implementation of AB 2121. The latter funding, however, is made available on a priority basis until the account is exhausted. Therefore, the additional \$1.5 million from the Tidelands Oil Revenue Account is not guaranteed.

The proposed resolution authorizes the Executive Director to advertise, negotiate, and execute contracts related to developing the principles and guidelines. Adoption of this resolution is needed because the dollar amount of the contracts will exceed the \$500,000 authorized under State Water Board Resolution 2002-0105.

POLICY ISSUES:

Should the State Water Board adopt the proposed resolution?

FISCAL IMPACT:

Budget authority for this work already exists. This activity is budgeted within existing resources, and no additional fiscal demands will occur as a result of adopting this resolution.

REGIONAL BOARD IMPACT:

None

STAFF RECOMMENDATION:

Staff recommends the State Water Board adopt the proposed resolution.

STATE WATER RESOURCES CONTROL BOARD

RESOLUTION NO. 2005-XXXX

AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE AND EXECUTE CONTRACTS FOR THE PREPARATION OF ENVIRONMENTAL DOCUMENTATION IN CONNECTION WITH THE DEVELOPMENT OF PRINCIPLES AND GUIDELINES FOR MAINTAINING INSTREAM FLOWS IN NORTHERN COASTAL STREAMS IN ACCORDANCE WITH STATE POLICY FOR WATER QUALITY CONTROL AS REQUIRED BY CALIFORNIA WATER CODE SECTION 1259.4 (AB 2121)

WHEREAS:

1. Assembly Bill 2121 (Stats. 2004, ch. 943, §§1-3) added sections 1259.2 and 1259.4 to the California Water Code.
2. Water Code section 1259.4 required the State Water Board to “adopt principles and guidelines for maintaining instream flows in coastal streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay, as part of state policy for water quality control . . .” for the purposes of water rights administration by January 1, 2007.
3. Water Code section 1259.4 was amended in July 2005 to extend the deadline for State Water Board adoption of the principles and guidelines to January 1, 2008.
4. The adoption of state policy for water quality control is exempt from the California Environmental Quality Act (CEQA) requirement to prepare an Initial Study and Negative Declaration or EIR. (Cal. Code Regs., tit. 14, §15250.) However, a Substitute Environmental Document (also called a Functionally Equivalent Document, or FED) must be prepared for this project. The FED must include, at a minimum, a project description, alternatives to the proposed project, and mitigation measures to avoid or reduce the proposed project’s effects on the environment.
5. The Budget Act of 2005, Senate Bill 77 (Stats. 2005, ch. 38) includes for the State Water Board \$3,666,000 from the Public Resources Account, Cigarette and Tobacco Products Surtax Fund, of which \$1.5 million is earmarked for this work.
6. Additionally, \$1.5 million in the Resources Trust Fund Tidelands Oil Revenue Account has been designated for development of the principles and guidelines required by Water Code section 1259.4.

7. The Division will contract with a private environmental services firm to develop the principles and guidelines, including the supporting environmental documents.

THEREFORE BE IT RESOLVED:

- 1) That the State Water Board authorizes the Executive Director to advertise, negotiate, and execute contracts with environmental services firms to develop the principles and guidelines, including the supporting environmental documents, for maintaining instream flows in coastal streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay.
- 2) That the contract(s) executed for development of the principles and guidelines shall not exceed \$3 million.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on September 22, 2005.

AYE:

NO:

ABSENT:

ABSTAIN:

D R A F T

Debbie Irvin
Clerk to the Board